

BEFORE THE JUDGE, LABOUR COURT, AKOLA.

Complaint (ULP) No. 01 of 2014.
CNR No. MHLC30-000004-2014.

Exh.

Shrikrishna Natthuji Lavhe ,
Age: 60 Years, Occ. Nil.
R/o. Gayatri Nagar, Mothi Umri,
Jatharpeth Akola - 444005
Tq. Telhara, Distt. Akola.

----- **COMPLAINANT.**

Versus

- 1) **Vice Chancellor,**
Dr. P. D. K. V.
Krishi Nagar, Akola - 444104.
- 2) **Registrar,**
Dr. P. D. K. V.
Krishi Nagar, Akola – 444104.
- 3) **Associate Dean,**
post Graduate Education Institute
Dr. P. D. K. V.
Krishi Nagar, Akola - 444104.

----- **RESPONDENTS.**

CORAM :- Smt. A. D. Bose, Judge.

APPEARANCES :- Shri. R. T. Vitankar, Adv. for Complainant.

Shri. V. R. Malviya, Adv. for Respondents.

: Order Below Exh. 1 on Preliminary Issues :
(Delivered on 15th October, 2019)

01] This is a complaint under Section 28 read with Item 1 of Scheduled IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (In short, “The MRTU & PULP Act”) for setting aside dismissal order dated 29th July, 2011 passed by respondent No. 2 and for declaration that the respondents have engaged in unfair labour practice. The complainant has also sought declaration that the inquiry authority submitted domestic inquiry report dated 7th July, 2011 without conducting any proper inquiry as per M.C.S. Rules and same is illegal, unfair and against the principle of natural justice and Rule of law.

In short, the case of the complainant is as under:

02] The complainant states that he was appointed as Junior Clerk on daily wages with the respondents as per order dated 28th April, 1977. Thereafter, he was confirmed as an Attendant on regular establishment after following due procedure of selection. In the year 2005, he was promoted as a Section Assistant on regular establishment in the service of respondent No. 1. It is thus, stated that the complainant was regular employee of the respondents. His service record was always clean and unblemished since the date of appointment.

03] Respondent No. 1 is the employer of the complainant within the meaning of the Industrial Dispute Act and the appointing authority of the complainant. Respondents No. 2 and 3 are the subordinate authorities to respondent No. 1

04] The complainant further states that the respondents have terminated his service vide order No. बीएबी/सअ/पशिस/आ. अपहार/2010/485 dated 29th July, 2011 without any inquiry by way of victimization in

colourable exercise of the employer's right and not in good faith. Therefore, thereby the respondents have engaged in unfair labour practice.

05] The complainant states that he was promoted from the post of the Attendant (Peon) to Section Assistant (Clerk) and posted as Cashier in the year 2007 under respondent No. 3 and he was assigned with heavy workload of the cash transactions. The complainant further states that respondent No. 2 Shri. M.S. Raul, In-charge Controller of the University conducted preliminary inquiry after verification of all accounts and records. As per the said preliminary inquiry, he found some discrepancies in maintenance of cash record. Thereafter, he submitted preliminary inquiry report on 2nd September, 2010. Without confirming any irregularity, misappropriation and without giving any opportunity of hearing, the complainant was held responsible for the discrepancies found in maintenance of cash record and other three cashiers at the relevant time were exonerated willfully and knowingly.

06] It is further stated that though respondent No. 2 was subordinate to the appointing authority of the complainant, he suspended the complainant as per order dated 8th October, 2010 with immediate effect without any reason. In January 2011, again Shri. M.S. Raul was ordered to initiate preliminary inquiry. He started verification of accounts and submitted his report on 13th January, 2011. As per the said report, Shri Raul held the complainant responsible for discrepancies found in maintenance of cash record and showed misappropriation of Rs. 4,76,581/-. He again exonerated other concerned three cashiers and superior officers of the complainant knowingly and willfully. The complainant further states that in the said report, no conclusion as regards misappropriation of money was drawn, but only some discrepancies in the maintenance of record were shown and it was

proposed that audit of records for the year 2007-2008 to 2009-2010 be done to find out irregularity and to draw a confirmed conclusion of any misappropriation. Thereafter, respondent No. 3 requested respondent No.1 to undertake internal audit of records for the year 2007-2008 to 2010, but no audit was undertaken by respondent no. 1.

07] The complainant further states that as per the preliminary inquiry report dated 13th January, 2011, without conducting audit of the relevant records as directed by respondent No.3, respondent No. 2 issued charge-sheet dated 28th March, 2011 to the complainant under Rule 8 of Maharashtra Civil Service (Discipline and Appeal) Rules, 1979 making allegations that the complainant committed misappropriation of an amount of Rs. 4,31,966/-. It is further stated that the documents mentioned in annexure IV attached to the memorandum of inquiry were not provided to the complainant for verification. The complainant made oral request to supply the documents as per annexure IV of the charge-sheet from time to time but the respondents failed to supply the same.

08] The complainant further submits that he gave reply to the chargesheet on 07th May, 2011 without reference to any relevant documents. Before submission of reply, the complainant has obtained the guidance and suggestions of Drawing and Disbursing officer Shri. G.G. Tonde and Shri S.B. Bavne, Assistant Registrar. It is stated that the complainant denied all the charges levelled against him in his reply. It is stated that the said Drawing and Disbursing Officers were also responsible for the discrepancies in the cash record and disciplinary action was also initiated against them by issuing separate charge-sheets on the basis of report submitted by Dy. Registrar.

09] The complainant further states that inquiry officer was appointed as per order dated 12th May, 2011 vide order No. 395 to make an inquiry as regards charges levelled against the complainant. But, the inquiry officer did not conduct inquiry as per procedure given under Rule No. 3 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and as per provisions of the manual of departmental inquiry 1991. It is further stated that on 21st June, 2011 a letter was taken from the complainant by the presenting officer and the inquiry officer as per their wish. Thereafter, the inquiry officer submitted his inquiry report to the respondents on 7th July, 2011.

10] It is further stated that the complainant was due for retirement on 31st July, 2011 as he reached the age of superannuation. Accordingly, on 1st July, 2011, the retirement order No. 1058 was issued to the complainant and he was retired from his service w.e.f. 31st July, 2011. As per the said order, it was mentioned that the pension case of the complainant would be decided as per Rule No. 27, 130 and 132 of Maharashtra Civil Services (Pension) Rules, 1982 because of pending disciplinary inquiry. As per inquiry report submitted by the inquiry officer, the complainant was held responsible for the misappropriation and the inquiry officer proposed to recover entire alleged misappropriated amount from him. Thereafter, respondent No. 2 issued show cause notice to the complainant on 19th July, 2011 proposing punishment for dismissal from his service. Thereafter, dismissal order dated 29th July, 2011 came to be issued against the complainant by respondent No. 2.

11] The complainant states that the inquiry conducted by the respondent No. 1 is vitiated as it is conducted in violation of principles of natural justice and article 311 of the Constitution of India. It is further stated that at the time of preliminary inquiry Shri. Raul had not given any

opportunity to the complainant to show the relevant challan and the documents. He also failed to record his statement. It is stated that the preliminary inquiry is done keeping the complainant in dark. It is further stated that the statements of other three cashiers working under respondent No. 3 were not recorded. Preliminary inquiry report was submitted by Shri. Rahul without going through available documents and without taking any assistance of the complainant as regards availability of the concerned record. He made no attempt to find out the truth. It is further submitted that as per preliminary inquiry report dated 02nd September, 2010 no conclusion as regards misappropriation of any amount was drawn and the report of audit from the appropriate authority was sought for. It is stated that the said preliminary report was vague. It is stated that even in the report dated 13th January, 2011 submitted by Shri. Raul, no conclusion of misappropriation was drawn.

12] It is further stated that the complainant was not supplied with any documents for his verification and to put forth his defence at the time of inquiry. In the inquiry, no witness was examined by the respondents and no opportunity was given to the complainant to cross examine the witnesses.

13] It is stated that the complainant did not give any absolute confession of guilt before the respondents or before the inquiry officer during the inquiry as regards the allegations levelled against him. It is further stated that the first hearing was fixed on 20th June, 2011 by the inquiry officer. But no inquiry was conducted that day and no rojnama is written to that effect. Further, no statement of the complainant is recorded. It is stated that on 21st June, 2011, a letter was taken from the complainant by the presenting officer as per direction of the inquiry officer which was not given by him as per his

free will and consent. It is stated that the first paragraph of the said letter is written by the complainant, but the second paragraph was dictated by the presenting officer and the inquiry officer which was treated as the confession of the complainant. It is stated that the said letter was obtained from the complainant by fraud, coercion and misrepresentation. Only on the basis of this letter, allegedly given by the complainant, the inquiry was stopped and the inquiry report is submitted to the respondents.

14] It is stated that respondent No. 2 is the subordinate authority to the appointing authority of the complainant who has issued the dismissal order dated 29th July, 2011 under his signature. It is stated that the Vice Chancellor, i.e. respondent No. 1 is the appointing authority of the complainant. Therefore, his subordinate authority i.e. respondent No. 2 cannot issue the dismissal order of the complainant and therefore, same is liable to be set aside.

15] The complainant further states that under Right to Information the complainant received information on 05/08/2013, 17/10/2013 and 07/12/2013 that even after completion of the audit of the concern record by the local fund audit department, the alleged misappropriation of amount is not found to be correct.

16] The complainant further states that dismissal order dated 29th July, 2011 is issued *ex parte* without considering the retirement order bearing No. 1058 dated 1st July, 2011. It is further submitted that the drawing and Disbursing officers Mr. G.G. Tonde and Mr. S.T. Pavane Asstt. Registrar, were superiors and the controlling authority of the complainant during the relevant period. It was the duty of the concerned controlling officer to verify the cash and cash record maintained by the complainant on day to day basis

and sign on cash book as an acknowledgement of verification. They were also bound to guide the complainant if any discrepancy was found in record as regards lack of knowledge of rules and procedure of maintenance of record.

17] It is further stated that the same charges were leveled against the complainant and Mr. S.T. Pavane Asstt. Registrar and according to the inquiry report both were held guilty for all the charges and Mr. G.G. Tonde Asstt. Registrar was held guilty for one charge. It is further stated that even through both, the complainant and Mr. S.T Pavane Asstt. Registrar were held guilty equally, they were awarded different punishment by the respondents knowingly, willfully and by way of unfair labour practice. It is stated that there was gross violation of principle of natural justice while conducting the inquiry against the complainant. It is therefore, stated the inquiry conducted against the complainant was unfair and not proper and the findings recorded therein are perverse.

18] To counter the contentions of the complainant, the respondents have filed their written statement cum reply at **Exh. C-14** . The respondents have denied all the material contentions of the complainant. However, it is admitted that the preliminary inquiry was conducted against the complainant as per which some irregularities were found in the cash records and it was also found that the complainant misappropriated the amount of the university. It is further stated that the complainant was suspended on 08th October, 2010 as per the said preliminary report. It is denied that the complainant was not supplied with the documents annexed with the charge-sheet which was issued on 28th March, 2011. It is further stated that the complainant gave detailed reply to the charge-sheet on 07th May, 2011 admitting all the charges levelled

against him. It is further stated that the inquiry was fixed on 20th June, 2011. Thereafter, on 21st June, 2011, the complainant appeared before the inquiry officer and admitted the charges in writing and thereafter, show cause notice dated 19th July, 2011 is issued against the complainant alongwith the inquiry report. It is further stated that the charges levelled against the complainant are duly proved in the inquiry which are serious in nature. It is further stated that the complainant misappropriated the amount of the university to the extent of Rs. 4,31,963/- and committed breach of trust, misusing his powers while discharging his duty and also cheated upon the respondents. Therefore, there was no other alternative for the respondents than to dismiss the complainant. Consequently, the service of the complainant is terminated w.e.f. 29/07/2011 which is proportionate punishment as per the proved misconduct committed by him.

19] It is stated that there had been no violation of principles of natural justice in the inquiry conducted against the complainant. It is stated that there is no illegality or irregularity in the inquiry and the inquiry officer gave full opportunity to the complainant to defend himself. It is stated that the respondents did not commit any unfair labour practice while conducting the inquiry and by dismissing the complainant. It is stated that the complainant was given all relevant documents with the charge-sheet. It is further stated that the complainant never objected that he did not receive any documents and never demanded the same. It is stated that defense taken by the complainant is totally false and baseless. It is stated that dismissal order is issued to the complainant by the competent authority. On the aforesaid grounds, the respondents have prayed for dismissal of this complaint.

20 The issues are framed at **Exh. O-1** out of which, Issue No. 1 is in respect of fairness of inquiry and Issue No. 2 is regarding perversity of findings of the Inquiry Officer, which are reproduced for my consideration as preliminary issues and I have given my findings to each of them with reasons as stated below.

Sr. No	Preliminary Issues	Findings
1	Whether the complainant proves that inquiry conducted by the respondents was not fair and proper and against the principles of natural justice?	Yes.
2	Whether the complainant proves that findings of the Inquiry Officer are perverse?	Yes.

REASONS

AS TO PRELIMINARY ISSUES NO.1 AND 2:-

21] At the outset, it would be worth to mention that relying upon the ratio laid down in the case of **Maharashtra State Co-operating Cotton Growers Fed. Ltd.-V/s- Vasant Ambadas Deshpande reported in 2014 (1) CLR** , as per order dated 20th March, 2019, this court directed the complainant and the respondents to argue on the preliminary issues only on the basis of inquiry proceedings and material before the inquiry officer. Therefore, in view of the said order, it would not be proper to consider any oral evidence recorded before the Court or any other documentary evidence, which are not part of inquiry proceedings for the adjudication of these preliminary issues.

22] Heard the ld. counsel for the complainant Shri. Vitankar in addition to his written notes of argument at **Exh.U-19**. I have also perused the said written notes of argument at **Exh. U-19** wherein he has contended that the complainant was not supplied with the documents as listed in Annexure A of the chargesheet and thereby violated the principles of natural justice. It is further submitted that the inquiry officer failed to record the statements of any witnesses and did not give any opportunity to the complainant to cross-examine them. It is therefore, submitted that the inquiry held against the complainant cannot be said to be fair and proper and consequently findings of the inquiry officer have to be held as perverse. In support of his arguments, the ld. Counsel for the complainant Shri. Vitankar has placed reliance on the judgment in the case of **Brij Bihari Singh -V/s- Bihar State Financial Corporation, (2015) 17 SCC 541**, wherein the Hon'ble Apex Court held as under:

"It is well settled that a person who is required to answer a charge imposed should know not only the accusation but also the testimony by which the accusation is supported. The delinquent must be given fair chance to hear the evidence in support of the charge and to cross-examine the witnesses who prove the charge. The delinquent must also be given a chance to rebut the evidence led against him. A departure from this requirement violates the principles of natural justice. Furthermore, the materials brought on record pointing out the guilt are required to be proved. If the enquiry report is based on merely ipse dixit and also conjecture and surmises cannot be sustained in law."

23] On the other hand, the ld. Counsel for the respondents has argued orally. He has submitted that all the documents were supplied to the

complainant along-with the charge-sheet and he never raised any objection that he has not received the documents. The ld. Counsel for the respondents further states that in reply to the charge-sheet issued to the complainant, he submitted his reply dated 07/05/2011 whereby he has categorically admitted all the allegations. He has further submitted that as per letter dated 21/06/2011 the complainant again admitted all the allegations in response to notice dated 14/06/2011. He has further submitted that the complainant further admitted the allegations levelled against him on 27/07/2011 and thereafter dismissal order came to be passed on 29/07/2011. It is therefore submitted that full opportunity was given to the complainant to defend himself in full fledged inquiry and as the complainant admitted his guilt the inquiry report is submitted by the inquiry officer on 07/07/2011. It is therefore submitted that there is no reason to hold that the fair opportunity was not given to the complainant and there is any violation of principle of natural justice and that the findings of the inquiry officer are perverse. In support of his argument the ld. Counsel for the respondents, Shri.Malviya has placed reliance on the Judgment in the case of **State Bank of India -V/s- Hemantkumar, 2011 II CLR 1** wherein it is held that, *the respondent had already tendered two admissions of his guilt in writing and one orally before Enquiry Officer and there was hardly anything to repel the charges.* He has further placed reliance on the judgment in the case of **Automotive manufactirers Pvt. Ltd. -V/s.- Shaikh Nasir Shaikh Kasim, 2018 II All M.R. 137**, wherein it is held that *the provisions of the Standing Order 25(4) of The Model Standing Orders under Schedule I to the Industrial Employment (Standing Orders) Act, 1946, require the Enquiry officer to record summary of the evidence led by either side. It also requires Enquiry Officer to record workman's plea. The term "evidence" has not been defined in the Act of 1946.*

*It is settled law that the Enquiry Officer is neither a Court nor a person who is authorized by law to conduct judicial proceedings. It is also a well settled law that strict rules of evidence are not applicable to the domestic enquiry conducted into allegations of misconduct against a delinquent employee. Therefore, the term 'evidence' would have to be understood in its plain and ordinary sense, meaning thereby something stated or shown by a witness that anything or state of thing or relation of things or any mental condition exists. Considering such meaning of the term "evidence" contemplated under 25(4) I find that even a written statement duly signed by a witness, filed in support of charge levelled against the delinquent employee, would be capable of being falling within the meaning of term 'evidence' used in Order 25(4) of Schedule I to the [Industrial Employment \(Standing Orders\) Act, 1946](#). Once such a statement is filed, the Enquiry officer would be under a duty to record concise summary of such evidence, but if he does not do so, it is interesting to find, the model standing order does not provide for any consequence of such failure. It would have to be then said that the written statement filed as evidence by the employer or the delinquent employee can be understood by the Enquiry Officer as equivalent to the summary of the evidence led before him, depending on facts and circumstances of each case. He has also placed reliance on the judgment in the case of **A. Sadanand -V/s. Syndicate Bank by its General Manager, 2011 II CLR, 306**, it is held that in his case, having refused to furnish the copy of the preliminary enquiry report submitted by the officials of the Vigilance Department of the Bank on the ground that the Bank is not relying on it, chose to examine both the officers of the Vigilance Department who conducted the preliminary enquiry and unearthed various illegalities said to have been committed by the petitioner. A look at the *ex parte* proceedings conducted by the Enquiry Officer makes it*

*abundantly clear that the Bank intends to prove the charges levelled against the petitioner only through these two witnesses. When the Bank does not want to rely upon the enquiry report, the question of examining the officers who conducted the enquiry does not arise as they are not competent to speak about the alleged irregularities committed by the petitioner. Lastly, he has placed reliance on the judgment in the case of **Mihir Kumar Hazara Choudhury -V/s.- Life Insurance Corporation and Another, 2018 (2) Mh.L.J, 282**, wherein it is held, “In our considered opinion also, the respondent(LIC) was able to prove the charges leveled against the appellant(employee). This we say for the following reasons:*

“Firstly, the charges can be held proved by mere reading of the appellant's reply (Annexure-B) wherein he, in no uncertain terms, admitted that he had issued the disputed premium/special premium receipts to the concerned policyholders and did not receive the amount from any of them. Secondly, all he had said was that such mistake occurred on his part due to heavy pressure of workload on him and some family circumstances/worries that were troubling him during those days which, in our opinion, was hardly any defense to the charges; and thirdly, he himself requested for taking action against him with leniency.” The Hon’ble Apex Court further held that “the departmental proceedings were conducted strictly in accordance with law by following the principle of natural justice in which the appellant duly participated. The appellant neither set up any defense nor denied the factum of charges, yet the respondent proved the charges with the aid of relevant evidence, which found acceptance to the Division Bench and this Court too. As an Appellate Court, neither we can sit over the findings of the Enquiry Officer and find fault in it nor can we re-appreciate the evidence of witnesses examined in departmental Enquiry.”

24] I have carefully perused the pleadings of both the parties and the documents placed on record. I have also gone through the rulings relied upon by both the parties. It is pertinent to note that the respondents have not produced the record of inquiry proceeding on record. All the material documents which are part of inquiry proceeding are placed on record by the complainant at **Exh.U/6**. The material documents being part of inquiry proceeding relied upon by the respondents to prove the fairness of inquiry and the legality of the findings are as under:

1. Record Verification Report dated 2nd September 2010.
2. Preliminary inquiry report dated 13th July, 2011
3. Memorandum of accusations or the charge-sheet dated 28th March, 2011
4. Reply dated 7th May, 2011 of the complainant to the memorandum of accusations or the charge-sheet
5. First hearing notice dated 14th June, 2011 given to the complainant informing first hearing to be held on 20th June, 2011
6. The alleged confession letter dated 21st June, 2011 given by the complainant.
7. The inquiry report dated 7th July, 2011 submitted by Shri. Kharche
8. Final show cause notice dated 19th July, 2011 given to the complainant with proposed punishment of dismissal along-with the inquiry report submitted by the inquiry officer
9. Dismissal order dated 29th July, 2011.

25] Admittedly, the charge-sheet or statement of accusations dated 28th March, 2011 is issued against the complainant on the basis of preliminary inquiry report dated 13th January, 2011 submitted by Shri. M.S. Raul wherein the complainant was held responsible for the misappropriation of Rs.4,31,966/-. It is seen that the previous verification report dated 2nd September, 2010 in respect of the records of accounts which was also submitted by Shri. M.S. Raul is also included as part of said preliminary inquiry report dated 13th January, 2011. As per charge-sheet dated 28th March, 2011 several allegations of misappropriation are levelled against the complainant as per accusations No.1 to 12. It is further seen that there are four annexures shown in the said chargesheet. 1st and 2nd annexures are the statements of accusations, 3rd annexure is the list of proposed six witnesses to be examined in the inquiry and 4th annexure is the list of documents including cash books, receipt books, bank challans, Bills of the year 2009-2010. It is pertinent to note that apparently, these documents such as cash books, receipt books, bank challans, bills of the year 2009-2010 on the basis of the preliminary inquiry report dated 13th January, 2011 and the previous record verification report dated 2nd September, 2010 were prepared are not annexed to the chargesheet and merely a list in respect thereof is annexed therewith. Likewise, it can be seen and observed that the preliminary inquiry report dated 13th January, 2011 and the previous record verification report dated 2nd September, 2010 are also not annexed with the chargesheet. There is nothing to show that either the documents mentioned in the annexure 4 of the chargesheet or the preliminary inquiry report dated 13th January, 2011 and the previous record verification report dated 2nd September, 2010 on the basis of which chargesheet is issued to the complainant were supplied to him

alongwith the chargesheet. Without giving opportunity for perusal or inspection of the aforesaid documents and the preliminary reports, it cannot be said that the complainant was given full opportunity to defend himself against the allegations levelled upon him. In this respect, it is argued by the Id counsel for the respondents that the complainant never asked for the said documents and set forth any defence during inquiry that for want of these documents any prejudice was caused to him. It is therefore, submitted that this issue cannot be now raised in this proceeding by the complainant.

26] According to the respondents, the complainant has admitted all the accusations stated in the chargesheet as per his reply dated 07th May, 2011 given by the complainant to the said charge-sheet. On perusal of said reply, it can be observed that the complainant has tried to give clarification and explanation about the discrepancies and entries which are shown to be default on the part of the complainant. In respect of some accusations, he has also stated that he has made the payment or deposited certain amount shown to be misappropriated though belatedly. He has also stated in his reply that in respect of certain accusations, he would be able to make further clarifications after going through the relevant challans and other documents. He has further stated that if any default is found on his part that he is ready to pay the amount of the alleged misappropriation. Thus, as per the said reply, there is no reason to infer that the complainant has admitted all the accusations as levelled in the chargesheet and that, he committed any misappropriation.

27] It can be further seen that after receipt of reply of the complainant to the chargesheet, notice dated 14th June, 2011 was issued to him informing that hearing of the inquiry was to be held on 20th June, 2011 at

the premises or office of respondent No.1. According to the respondents, in response to the said notice, the complainant gave a letter dated 21st June, 2011 admitting all the allegations. Therefore, on the basis of said letter of the complainant, treating it to be his confession, without conducting further inquiry, the inquiry report was submitted by the inquiry officer Shri. W.W. Kharche on 7th July, 2011.

28] It is pertinent to note that the respondents filed nothing on record to show that any hearing was taken on 20th June, 2011 as per notice dated 14th June, 2011. No such proceeding or rojnama of 20th June, 2011 is placed on record. No record is filed on record to show, whether the complainant remained present on that day before the enquiry officer. It is not the case of the respondents that after that day, the hearing was adjourned to 21st June, 2011. The question therefore, arises how and why the complainant appeared before the inquiry officer on 21st June, 2011 and gave the alleged confession letter of the said date. As per the said letter of the complainant, it is shown that the said statement is given by him before the inquiry officer in presence of the presenting officer Shri. Narkhade. It bears signature of the complainant. The presenting officer Shri. Narkhade and the inquiry officer Shri. Kharche also endorsed the same as recorded before them, putting their signatures. From the aforesaid circumstances, the possibility cannot be ruled out that the said confession was obtained by the respondents and same is not given voluntarily. The said alleged confession also cannot be taken into consideration as same is apparently given by the complainant without being opportunity given to him to go through all the material documents forming the basis of charges levelled against him. In view of the aforesaid discussion, it has to be held that the inquiry officer has failed to follow the principles of

natural justice while conducting the inquiry and same is unfair and not proper. In view of the aforesaid facts and circumstances, the arguments advanced on behalf of the respondents cannot be accepted and the rulings relied upon by them cannot be held to be applicable in the present matter.

29] Admittedly, the inquiry report dated 07th July, 2011 is submitted by Shri. Kharche only on the basis of alleged confessional statement of the complainant without scrutinizing the relevant cash books and other material to verify the truthfulness of the preliminary inquiry report or examining the reporter Shri. Raul. He has absolutely failed to apply his mind while recording his findings to arrive at a conclusion that the complainant has committed any misappropriation. Consequently, it is to be held that the findings recorded by the inquiry officer are perverse.

30] In view of the above, I am inclined to hold that complainant has proved that inquiry conducted by the respondents is not in accordance with principles of natural justice. Thus, there is material on record to vitiate the inquiry. The findings are arrived at without recording any reasons and without application of mind only on the basis of so called confessional statement of the complainant dated 21/06/2011. It is therefore, clear that findings of the inquiry officer are perverse. Hence, considering the facts and circumstances of the case and material on record, I am of the view that complainant has proved that inquiry was not conducted in accordance with the principles of natural justice and findings are perverse. Hence, I answer issue Nos. 1 and 2 in affirmative and I proceed to pass following order :-

: ORDER :

- 01] It is held and declared that the inquiry conducted by the respondents is not fair and proper and is not in accordance with the principles of natural justice.
- 02] The findings given by the Inquiry Officer are not proper and legal.

Akola.

Date :-15/10/2019.

**(Smt. A.D.Bose)
Judge,
Labour Court, Akola.**